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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Appellant,

v.

RUBEN BENJAMIN VARGAS,

Defendant and Appellant.

F069911

(Super. Ct. No. CRM023125)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Merced County. Donald E. Shaver, Judge. (Retired judge of the Stanislaus County Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Kendall D. Wasley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Kane, J. and Franson, J.

Appellant Ruben Benjamin Vargas appeals his convictions for being a felon in possession of ammunition (Pen. Code, § 30305, subd. (a)(1)/count 1) and receiving stolen property (Pen. Code, § 496, subd. (a)/count 2). Specifically, appellant contends his constitutional rights were violated when officers conducted a warrantless search of his bedroom pursuant to a probation search clause applicable to his brother, Adam. Appellant moved to suppress the evidence obtained in the search and pursuant to a later-issued warrant. The trial court denied the motion. Appellant proceeded to a jury trial where he was convicted of counts 1 and 2. This appeal timely followed, contesting the trial court's denial of the motion to suppress. For the reasons set forth below, we affirm.

FACTS FROM SUPPRESSION MOTION¹

On May 29, 2012, Merced County Sheriff's Deputy Jason Cope, who at the time was assigned to the Merced Multiagency Narcotics Task Force (Task Force), arrived at 432 Brimmer Road to investigate a "marijuana tip." He was denied entry to the residence at that time.

The next day, Deputy Cope contacted Merced County Probation Officer Shoua Her, at the time also a member of the Task Force, and asked Officer Her to check whether any probationers lived at the address. Officer Her checked the probation department's database and found that one Adam Vargas (Adam) was on active felony probation and had his address listed as 432 Brimmer Road. Officer Her also found that Adam's probation terms permitted the search and seizure of his person and property. Based on this information, several officers, including Deputy Cope and Officer Her, went to 432 Brimmer Road to conduct a probation search of Adam's residence.

When the officers arrived at 432 Brimmer Road on May 30, 2012, they were met at the door by appellant. The officers identified themselves and stated they were there to

¹ The facts are only drawn from the evidence presented at the May 2, 2013 hearing on the motion to suppress.

conduct a probation search on Adam. Appellant refused entry to the officers, claiming Adam did not live there. When appellant attempted to stop Officer Her from entering the residence, appellant was forcibly detained.

Once inside, officers encountered Annette Garcia, who was Adam and appellant's mother. When told the officers were there to conduct a probation search relating to Adam, Ms. Garcia stated that Adam no longer lived at the house. However, when questioned about where Adam now lived, Ms. Garcia said Adam lived a couple of blocks away with a girlfriend. She could not provide an exact address or street name.

Officer Her then informed Ms. Garcia the officers were going to conduct a protective sweep of the residence. Ms. Garcia permitted the search. Through the sweep, it was determined that Adam was not present at the house. In addition, officers found no clear indicia showing Adam lived there.

Once the officers completed their protective sweep, Deputy Cope began searching the contents of one of the three bedrooms in the home. The purpose of this search was to confirm that Adam was, in fact, living at the residence. Although appellant and his mother claimed Adam had moved and the room being searched was being used by appellant, Deputy Cope had experienced several probation searches where he had confirmed a probationer resided at the location but was told the person did not live there. And Officer Her testified that he routinely checked bedrooms for mail when told a probationer did not live at the residence anymore to confirm he was being told the truth.

Deputy Cope further testified regarding the reason he searched one of the bedrooms. Based on Deputy Cope's observations, the room he searched appeared to be occupied by an adult male. There were no obvious signs that it was appellant's room. Upon entering the bedroom, Deputy Cope noticed a credit card on a shelf. He removed the card to see whether it had Adam's name on it. The card was issued to Ronald Hansen, a judge of the Merced County Superior Court.

Deputy Cope then sought to determine whether the card was stolen and, upon finding it was, contacted Merced County Sheriff's Detective Erick Macias, who obtained a search warrant.

DISCUSSION

In determining whether appellant's motion to suppress was properly denied, we must resolve whether the warrantless search of the contents of the bedroom, leading to the discovery of the stolen credit card, was constitutionally valid.

Standard of Review and Applicable Law

Our standard of review for a motion to suppress is governed by well-established principles. (*People v. Ormonde* (2006) 143 Cal.App.4th 282, 290.) "As the finder of fact in a proceeding to suppress evidence (Pen. Code, § 1538.5), the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable." (*People v. Woods* (1999) 21 Cal.4th 668, 673.) Our review defers to the trial court's factual findings and independently applies the requisite legal standard to the facts presented. (*People v. Celis* (2004) 33 Cal.4th 667, 679.)

The Fourth Amendment bars unreasonable searches and seizures. (*Maryland v. Buie* (1990) 494 U.S. 325, 331 (*Buie*).) When determining the reasonableness of a search, the intrusion on an individual's Fourth Amendment rights is balanced against the promotion of "legitimate governmental interests." (*Buie, supra*, p. 331.) Searches of a house, for instance, are generally not reasonable without a warrant issued on probable cause. (*Ibid.*) Nevertheless, because of the need to balance these competing interests, there are exceptions where neither a warrant nor probable cause is required. (*Ibid.*) One example relevant to this case is the probation search.

The Contested Search of Appellant's Room was Reasonable as a Probation Search²

Appellant contests the warrantless search of the contents of the bedroom under the argument that it was not justified as part of a valid probation search. We disagree.

A probation search is founded upon the advance consent of the probationer, generally given in exchange for the opportunity to avoid serving time in state prison. (*People v. Robles* (2000) 23 Cal.4th 789, 795 (*Robles*).) Where officers are aware that a person is on probation, and that the probation terms contain a search clause, officers may conduct a warrantless search that is consistent with the scope of that clause. (*People v. Schmitz* (2012) 55 Cal.4th 909, 916.) Such searches are justified “because they aid in deterring further offenses by the probationer and in monitoring compliance with the terms of probation.” (*Robles, supra*, at p. 795.) The authority to conduct such a search is not limitless, however. As one relevant example, in situations where probationers reside with nonprobationers, those nonprobationers “retain valid privacy expectations in residential areas subject to their exclusive access or control, so long as there is no basis for officers to reasonably believe the probationer has authority over those areas.” (*Id.* at p. 798.)

This case turns on whether officers could reasonably believe that Adam had authority over the bedroom searched. In this analysis, the trial court’s factual findings are instructive. After hearing testimony from Deputy Cope and Officer Her regarding the planning and execution of the probation search, the trial court found that (1) Adam “was on active probation with a search and seizure clause”; (2) Adam had given his last current address as 432 Brimmer Road; (3) it was reasonable for the police to infer that a probationer is required to advise the probation department of his or her current address

² The People argue the search was further justified under the protective sweep doctrine. Although we ultimately uphold the search, we note that the protective sweep doctrine does not justify the search in this instance. (See *Buie, supra*, 494 U.S. 325 at p. 335 [limited protective sweep to a cursory visual inspection of spaces where a person may be found].)

and any moves; (4) 432 Brimmer Road was occupied by at least Adam's mother and one of her adult sons; (5) appellant claimed to be the son living in the house; and (6) Deputy Cope's past experience showed that in these types of searches, individuals will state that someone who is actually living at the residence does not live there. In addition, the facts developed at the hearing showed that Adam had resided at the residence in the recent past, that his mother could not provide either an address or street name for Adam's alleged new home, and that at least one of the bedrooms showed signs that an adult male was residing within. Based on the totality of the facts presented, the trial court found it was reasonable for the officers "to go ahead and conduct at least a cursory search of the residence to determine and verify [appellant's] statement that Adam did not live there any further."

Appellant argues that no facts exist to support a finding "that the officers reasonably believed that Adam, the probationer in this case, had complete or joint control over appellant's room." We disagree. The above facts are substantial evidence supporting the trial court's implicit determination that the officers could reasonably believe that Adam had authority over the bedroom in question. The officers had credible information that Adam resided at 432 Brimmer Road. (See *People v. Downey* (2011) 198 Cal.App.4th 652, 660 ["That the officers could have taken additional steps to verify [probationer's] residence does not undermine our conclusion that the officers acted reasonably based on the information they already had when they acted."].) And, when they arrived, they observed additional facts that could support that understanding.

While the officers heard statements that Adam had moved, they were not required to accept these statements as true. (*People v. Boyd* (1990) 224 Cal.App.3d 736, 749 ["Even if the nonparolee roommate's claim of ownership sounds reasonable, reasonable suspicion may be predicated on the parolee's possession or control of the object. The officer must reasonably suspect that the object is owned, controlled or possessed by the parolee for the search to be valid."].) In fact, the officers were aware of facts

contradicting the claim that Adam had moved, including the fact that appellant's mother could not substantiate her claim that Adam had moved with any specificity and the officers' prior experiences showing that such statements were of suspicious credibility in the context of probation searches.

Given that the reasonableness of the officers' belief that Adam had authority over the bedroom is a factual issue, we must defer to the trial court's weighing of the facts available and ultimately its determination of this issue. (*People v. Tidalgo* (1981) 123 Cal.App.3d 301, 307-308.) Because the officers could reasonably believe Adam had authority over the bedroom, they were legally permitted to conduct a probation search of the room. Balancing the resulting alleged intrusion of appellant's Fourth Amendment rights against the well-settled government interest in conducting searches pursuant to probation terms, we conclude the search was reasonable.

Having determined the disputed search leading to the discovery of the credit card was constitutionally sound, we need not reach appellant's remaining arguments that the subsequently obtained search warrant was invalid, the good faith exception does not apply, and the failure to suppress warrants reversal.

DISPOSITION

The judgment is affirmed.